IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13581 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHADRABEN, WD/O S M RATHOD. - Petitioner(s)
Versus
COMPETENT AUTHORITY & ADDL. COLLECTOR & 1 - Respondent(s)

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Appearance :
MR NK PAHWA FOR MR PM THAKKAR for Petitioner(s) : 1 - 5.
GOVERNMENT PLEADER for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 28/12/2006

ORAL JUDGMENT

1. Shri N.K. Pahwa, learned counsel for the petitioners and Shri A.Y. Kogje, learned Assistant Government Pleader for the respondents – State.
2. The petitioners, being aggrieved by the order

dtd.31/5/1994 passed in Dispute (Appeal) No.Vadodara-23 of 1989 holding that the order passed by the Competent Authority did not call for nay interference, has filed the present writ application.

3. Short facts necessary for disposal of the present matter are that the Competent Authority / Collector, by order dtd.13/3/1987 held that the petitioners were holding the land in excess of the ceiling permissible limit, he also held that the petitioners were holding 12,587 sq.mtrs. land while their entitlement was only 1500 sq.mtrs., he accordingly directed vesting 11,087 sq.mtrs, land in favour of the State Government. Being aggrieved by the said order, the original holder Shanabhai Mahijibhai Rathod filed Ceiling Appeal Case No.23 of 1989. The said Shanabhai Mahijibhai Rathod expired on 21/8/1990 and his legal representatives were brought on record. The said representatives are, widow and four sons, who are petitioners in this writ application.

4. It was argued before the appellate authority that the land was agricultural land, it was used for agricultural operations, on the date when the appeal was to be heard by the appellate authority, Shanabhai Mahijibhai Rathod was succeeded by five persons, therefore, each would

have one unit and that order passed by the competent authority was bad.

5. The appellate authority observed that the final orders under secs. 10(1), 10(3) and 10(5) of the Ceiling Act were passed and thereafter the Government had taken possession of the land in dispute.

6. The appellate authority observed that on the date of the enforcement of the Act / Appointed Day, Shanabhai Mahijibhai Rathod was alive and as it was his personal property, his legal representatives were not entitled to make a submission that each of them would be entitled to one unit.

7. Shri Pahwa, learned counsel for the petitioners submits that the learned appellate court had rejected the petitioners' objection in one line saying that the arguments of the petitioners that it was agricultural land could not be accepted.

8. After hearing the learned counsel for the parties, I must hold that some of the findings recorded by the appellate authority is bad, illegal and tantamount to non-exercise of the jurisdiction.

9. If the law recognizes agricultural land or land over which the agricultural operations are carried on, as a separate

and distinct entity and grants exemption from the provisions of the Urban Land Ceiling Act, then the right of the parties could not be decided in one line that the arguments is not acceptable. The appellate authority was obliged to decide the question that whether the land was recorded as agricultural land or it was under agricultural operations. If either of the question was to be answered in favour of the holder of the land or his legal representatives, the final order could have been different.

10. Shri Pahwa, learned counsel for the petitioners also submits that if the order passed by the competent authority has been confirmed by the State in its revisional powers, the appeal filed by the present petitioners would not become infructuous.

11. It is to be noted that the appellate authority has not dismissed the petitioners' appeal on that count, it had simply referred to that factual aspect to dismiss the appeal on merits. As the order passed by the appellate authority sans reasons and it does not consider the dispute in its true perspective, the order cannot be allowed to stand. It is, however, made clear that this Court is not setting aside the findings relating to right of the petitioners to have one unit, that part of the order is

being confirmed. The rest of the order is set aside. The matter is remitted to the Special Secretary (Appeals) for hearing the matter afresh. The petitioners shall appear before the Special Secretary (Appeals) on 22/1/2007 with a copy of this order. The authority shall grant due opportunity of hearing to the petitioners and shall decide the matter in accordance with law. However, if it is of the opinion that because of the exercise of the revisonal powers by the State Government, the appeal has become infructuous, it shall say so and it shall also be obliged to decide the question that whether the land in question on the Appointed Day was agricultural land or was under agricultural operation and if yes, what shall be the effect.

12. The petition to the extent indicated above is allowed. No costs.

(R.S. GARG,J.)

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